

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



[Published in Gazette No. 92 of 28 July 1995]

1. This rule is made by the Rule Committee on 17 July 1995, and has effect on and from 28 July 1995.

2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:

(a) Part 1 rule 3 (1)

Insert in alphabetical order:

“**dismiss**”, in relation to any proceedings, means finally dispose of the proceedings, but (except where the proceedings consist of an appeal to a court) without prejudice to any right to commence fresh proceedings seeking the same, or substantially the same, relief;

(b) Part 9 rule 8

After subrule (5) insert:

(6) The person before whom the pre-trial review of an action is held may make any order which the court might make as to any costs which are recoverable under Part 31A rule 12.

(c) Part 17A rule 13 (1)

Omit “any third or subsequent party may serve on any other party an offer to contribute”, insert instead “any party may serve on any other party an offer to contribute, or to accept an amount in contribution,”.

(d) Part 31A rule 13

After Part 31A rule 12 insert:

Applications and appeals under section 208M of the Legal Profession Act 1987

13. (1) In this rule:

“**appeal**” means appeal to a court under section 208M of the subject Act;

“application for leave” means application under section 208M (2) of the subject Act seeking leave of a court to appeal to the court against a determination of a costs assessor;

“subject Act” means the Legal Profession Act 1987.

(2) An application for leave may be made by notice of motion under Part 15.

(3) An application for leave must be filed and served within 14 days of the date on which the decision sought to be appealed against was given or within such extended time as the court may fix.

(4) The court may extend the time prescribed in subrule (3) at any time.

(5) The applicant for leave must file with, or include in, the notice of motion or a supporting affidavit:

- (a) a statement of the points on which the applicant objects to the decision of the assessor;
- (b) a statement of the reasons why leave should be given;
- (c) all of the documents which were submitted by the parties for the consideration of the assessor, or copies of those documents; and
- (d) where the assessor has given reasons for the decision sought to be appealed against, a copy of those reasons.

(6) On the day fixed for the hearing or adjourned hearing of the application, the court may proceed to hear and determine the application or may adjourn it to another day.

(7) The court may, whether or not it adjourns the application, require any party to produce any relevant document in the party's possession or control, or to provide further particulars as to the party's case in the application.

(8) Where the court grants leave to appeal under section 208M (3) of the subject Act, it may give direction as to the extent, if any, to which matters before it, and decisions by it, on the application for leave are admissible or binding on the hearing of the appeal, and may:

- (a) proceed immediately to hear and determine the appeal; or
- (b) give such directions as to filing and service of documents, conferences, fixing of a hearing date, and any other matter as appear requisite for the hearing and determination of the appeal.

(9) Unless the court otherwise orders, an application for leave and an appeal shall be heard and determined in chambers, and not in the presence of the parties.

EXPLANATORY NOTE

The purpose of the amendments is:

- (a) to define “dismiss”, in relation to proceedings, as finally disposing of the proceedings but not necessarily of the right of action;
- (b) to ensure that an assessor or registrar conducting a pre-trial review in the Small Claims Division has the same limited powers as the court has to award costs;
- (c) to ensure that a defendant may make to a third party an offer as to contribution which can be taken into account on questions of costs;
- (d) to provide a procedure for the hearing of applications for leave to appeal, and appeals, from the decisions of costs assessors under section 208M of the Legal Profession Act 1987.

E. J. O'GRADY,
Secretary to the Rule Committee.
